IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 177 OF 2001

1. Special Land Acquisition
Officer (South Goa),
Konkan Railway Corporation
Limited, Amey Guest House,
Davorlim Road, P.O.
Navelim, Salcete, Goa,
403 707, and

2. Chief Engineer, Konkan
Railway Corporation Ltd.,
Rawnfond, near Margao
Railway Station, Margao, Goa. ..... Appellants.

Versus

1. Uttam Rama Naik Dessai (deceased)
represented by his legal heirs

1a. Smt. Indira Uttam Dessai,
Ponsulem- Canacona- Goa.

1b. Shri Vikas Uttam Dessai,
Ponsulem - Canacona, Goa. ..... Respondents.

Mr. E. Afonso, Advocate for the appellants.

Mr. P.A. Kamat, Advocate for th respondents.

CORAM : A.P. LAVANDE, J.

DATE : APRIL 21, 2005.

ORAL JUDGMENT :

By this appeal, the appellants challenge Judgment and Award dated 18.04.2001, passed by the Additional District Judge III (South Goa), Margao in Land Acquisition Case No.145/1995.

2. By Notification dated 24.7.1991, issued under Section 4(1) of the Land Acquisition Act, 1894 (hereinafter, referred to as `the Act'), the Government acquired for Konkan Railway Corporation Ltd., large chunks of land, situated at Nagarcem-Palolem in Canacona Taluka admeasuring 1810 sq. metres bearing Survey Nos. 48/11, 56/4, 57/17 and 57/18 belonging to the original applicant Uttam Rama Naik Dessai, who died during the pendency of Land Acquisition Case No.145/1995, were part of the acquired land. An area of 600 sq. metres bearing Survey No.56/18 in respect of which said Uttam Naik Dessai was tenant, was also acquired. The lands acquired are paddy fields. The Special Land Acquisition Officer, by his Award dated 9.12.1993, awarded Rs.8.10 per sq. metre for the tenanted paddy fields and Rs.9/- per sq. metre for the non-tenanted paddy fields. The Special Land Acquisition Officer awarded Rs. 8.10 per sq. metre to the tenants of the paddy fields and 0.40 paise to the owners of the paddy fields.

3. Being dissatisfied, said Uttam Naik Dessai sought reference. As stated above, during the pendency of Land Acquisition Case No.145/1995, the original applicant expired and his legal

representatives were brought on record. The reference Court enhanced the compensation in respect of the paddy fields to Rs.24/- per sq. metres, relying upon the Award dated 15th March, 1989 in respect of land acquired for an approach road to Talpona- Galgibag bridge in Canacona Taluka. The Award was in respect of an area of 1,34,400 sq. metres acquired by Notification dated 30/4/1986, issued under Section 4(1) of the Act. The reference Court awarded the entire compensation in respect of Survey Nos. 48/11 and 56/4, in favour of the applicant and in respect of Survey Nos.57/17 and 57/18, the reference Court awarded 1/3rd share in favour of the original applicant. In respect of survey No.56/18, reference Court also awarded 50 % of excess compensation in favour of the applicant.

4. The only point for determination which arises in the present appeal is whether the compensation fixed by the reference Court in respect of the paddy fields at the rate of Rs.24/- per sq. metre is legal and justified and, if not, what is the compensation payable in respect of the acquired lands ?

5. Mr. Afonso, learned Counsel appearing for the appellants submitted that the reference Court ought not to have awarded Rs.24/- per sq. metre in respect of the paddy fields inasmuch as the said lands had no building potential. The learned Counsel submitted that in any

event, the reference Court ought not to have granted increase of 10 % every year on the basis of the Award dated 15th March, 1989. The learned Counsel further submitted that in connected matters arising out of the same notification, this Court has granted Rs.19/- per sq. metre for the paddy fields and, therefore, in any event, the compensation cannot exceed Rs.19/- per sq. metre.

6. Per contra, Mr. Kamat, learned Counsel appearing for the respondents submitted that the reference Court was absolutely justified in relying upon the Award dated 15th March, 1989 and granting 10 % increase every year in respect of the paddy fields. According to the learned Counsel, the acquired lands had good potential and were similar to the lands which were subject-matter of the Award dated 15th March, 1989 and, therefore, no interference is called for by this Court against the impugned Judgment and Award. The learned Counsel further submitted that the reference Court ought to have awarded the entire enhanced compensation in respect of Survey No.56/18 which was a tenanted paddy field, since the original applicant before the reference Court who was the tenant in respect of the paddy field, had sought enhanced compensation at the rate of Rs.100/- per sq. metre in respect of the said land and the owner who was granted 00.40 paise by the reference Court had not sought any reference, claiming higher compensation.

7. I have considered the submissions made by the learned Counsel appearing for the parties. In so far as the submission of Mr. Afonso that the reference Court ought not to have relied upon the Award dated 15th March, 1989 is concerned, I am unable to agree with the submission inasmuch as the Award was in respect of similar lands situated in the proximity of the acquired lands and, therefore, the reference Court was absolutely justified in relying upon the said Award for fixing the market rate of the acquired lands. However, I find merit in the submission of Mr. Afonso that the reference Court ought not to have granted 10 % increase every year, since the lands were situated at Nagarcem-Palolem in Canacona Taluka and the applicant before the reference Court had not led any evidence that the prices of paddy fields increased by 10 % every year. Moreover, in other connected appeals, under the same notification dated 24.7.1991, I have awarded Rs.19/- per sq. metre in respect of the paddy fields by granting increase of 5 % every year. For the same reasons, I award Rs.19/- per sq. metre in respect of the lands acquired in the present case.

In respect of Survey Nos. 48/11 and 56/4, the reference Court was justified in awarding the entire compensation to the original applicant and in respect of Survey Nos. 57/17 and 57/18, the reference Court was justified in awarded 1/3rd compensation in favour of the original

applicant. However, in respect of Survey No.56/18, in respect of which the original applicant was tenant, in my opinion, the reference Court was not justified in awarding 50 % compensation inasmuch as the application for enhancement claiming Rs.100/- per sq. metre was made by the original applicant and the owner who was awarded 00.40 paise in respect of the said land had not made any reference claiming enhancement of compensation. Mr. Afonso has submitted that 00.40 paise per sq. metre was paid to the owner, who had accepted the same and he had not sought any reference. That being the position, I find myself unable to agree with the approach of the reference Court in awarding only 50 % compensation in favour of the original applicant. Therefore, I hold that the respondents who are the legal representatives of the original applicants before the reference Court are entitled to the enhanced compensation at the rate of Rs.19/- per sq. metre.

8. In view of the above discussion, the appeal is partly allowed. The compensation payable in respect of the acquired lands which are paddy fields is fixed at Rs.19/- per sq. metre and the entire compensation in respect of Survey Nos. 48/11 and 56/4 is awarded to the respondents and in respect of Survey Nos.57/17 and 57/18, 1/3 rd of the enhanced compensation is awarded in favour of the respondents. In respect of Survey No.56/19, the entire enhanced compensation is ordered to be paid to the respondents.

Having regard to the facts and circumstances of the case, the parties are directed to bear their own costs.

A.P. LAVANDE, J.

ssm.